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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ADIDAS AMERICA, INC., a Delaware corporation; **ADIDAS AG**, a foreign entity; **ADIDAS INTERNATIONAL MARKETING B.V.**, a foreign entity; **REEBOK INTERNATIONAL LTD.**, a Massachusetts corporation; and **REEBOK INTERNATIONAL LIMITED**, a foreign entity,

Plaintiffs,

v.

TRB ACQUISITIONS LLC, a New York limited liability company, **CUTIE PIE BABY, INC.**, a New York corporation, **ELITE PERFORMANCE FOOTWEAR, LLC**, a New York limited liability company, **GINA GROUP LLC**, a New York limited liability company, **ONE STEP UP, LTD.**, a New York limited company, **SARAMAX APPAREL GROUP, INC.**, a New York corporation, **UNITED LEGWEAR**

No. 3:15-cv-02113-SI

DECLARATION OF NICHOLE DAVIS CHOLLET

In Support of Plaintiffs' Motion to Compel Production of Documents

COMPANY, LLC, a New York limited liability company, **ACTIVE BASICS LLC**, a New York limited liability company, **USPA ACCESSORIES, LLC DBA CONCEPT ONE**, a New York limited liability company, **IMX, LLC**, a New York limited liability company, **KIDZ CONCEPTS, LLC**, a New York limited liability company, **Q4 DESIGNS LLC**, a New York limited liability company, **RBX.COM, LLC**, a New York limited liability company, **C.D.B. BRANDS LLC**, a New York limited liability company, and **L.A. KIDZ, INC.**, a New York corporation,

Defendants.

I, Nichole Davis Chollet, make the following Declaration:

1. My name is Nichole Davis Chollet. I am an attorney with the law firm Kilpatrick Townsend & Stockton LLP, attorneys of record for Plaintiffs adidas America, Inc., adidas AG, adidas International Marketing B.V., Reebok International Ltd., and Reebok International Limited (collectively, “Plaintiffs”) in the above-styled action. I submit this Declaration in support of Plaintiffs’ Motion to Compel Production of Documents. I am competent to make this Declaration based on my personal knowledge of the facts and events described below. These facts and events are true, or believed by me to be true, and I would testify competently to them if called upon to do so.

TRB’s Discovery Responses and Productions

2. Plaintiffs served their first sets of document requests and interrogatories on Defendant TRB Acquisitions LLC (“TRB”) on January 15, 2016, and served TRB with a second set of document requests on May 18, 2016. Attached as **Exhibits A, B, and C**, respectively, are true and correct copies of (i) Plaintiffs’ First Interrogatories to TRB, (ii) Plaintiffs’ First Set of Requests for the Production of Documents and Things to TRB, and (iii) Plaintiffs’ Second Set of Requests for Production of Documents and Things to TRB.

3. TRB served responses and objections to Plaintiffs' first set of discovery on February 26, 2016, and to Plaintiffs' second document requests on June 27, 2016. Attached as **Exhibits D, E, and F**, respectively, are true and correct copies of (i) TRB's Responses and Objections to Plaintiffs' First Interrogatories, (ii) TRB's Responses and Objections to Plaintiffs' First Set of Document Requests, and (iii) TRB's Responses and Objections to Plaintiffs' Second Set of Document Requests.

4. TRB served First Amended Responses and Objections to Plaintiffs' Interrogatories on April 28, 2016, identifying for the first time its full list of licensees of the RBX mark and RBX Logo for footwear and apparel.

5. TRB served Second Amended Responses and Objections to Plaintiffs' Interrogatories on August 29, 2016. A true and correct copy of TRB's Second Amended Responses and Objections to Plaintiffs' Interrogatories is attached as **Exhibit G**.

6. In response to Plaintiffs' discovery requests, TRB produced documents to Plaintiffs on (i) May 20, 2016, (ii) June 9, 2016, (iii) July 7, 2016, (iv) August 16, 2016, (v) August 17, 2016, (vi) August 18, 2016, and (vii) October 6, 2016.

The Licensee Defendants' Discovery Responses and Productions

7. On April 22, 2016, Plaintiffs served subpoenas seeking documents and depositions from a number of TRB's licensees — namely, Cutie Pie Baby, Elite Performance Footwear, Gina Group, One Step Up, SaraMax, and United Legwear Company. On May 2, 2016, Plaintiffs served subpoenas seeking documents and depositions on additional TRB licensees — namely, Active Basics, USPA Accessories, LLC d/b/a Concept One, IMX, LLC, Kidz Concepts, Q4 Designs, and RBX.com. On May 10, 2016, Plaintiffs served a subpoena seeking documents and a deposition on LA Kidz, another TRB licensee. On May 24, 2016, Plaintiffs served a subpoena seeking documents and a deposition on C. D. B. Brands, another TRB licensee. Cutie Pie Baby, Elite Performance Footwear, Gina Group, One Step Up, SaraMax, and United Legwear Company, Active Basics, C. D. B. Brands, IMX, LLC, Kidz Concepts, LA Kidz, Q4 Designs, and RBX.com and USPA Accessories, LLC d/b/a Concept One are collectively referred

to as the "Licensee Defendants." The Licensee Defendants and TRB are collectively referred to as the "Defendants."

8. TRB's counsel notified Plaintiffs on May 3, 2016, that they were representing the Licensee Defendants as well as TRB.

9. Plaintiffs attempted to obtain responses to the subpoenas served on the Licensee Defendants, but those attempts were unsuccessful. On June 1, 2016, Plaintiffs filed a Motion for Leave to File First Amended Complaint to add the Licensee Defendants as defendants in this case. On July 26, 2016, the Court granted Plaintiffs' motion for leave to amend.

10. On July 29, 2016, Plaintiffs followed this Court's order and converted the subpoenas into document requests and deposition notices to the Licensee Defendants. These discovery requests were substantially identical to those previously served.

11. On August 31, 2016, the Licensee Defendants served consolidated Objections and Responses to Plaintiffs' First Set of Document Requests for all the Licensee Defendants, a true and correct copy of which is attached as **Exhibit H**. The Licensee Defendants made their first document production on September 8, 2016. The Licensee Defendants supplemented their productions on October 6, 2016.

The Parties' Meet-and-Confer Conferences

12. On May 3, 2016, counsel for Defendants sent a letter to counsel for Plaintiffs regarding the deposition and document subpoenas served on the Licensee Defendants. A true and correct copy of this May 3 letter is attached as **Exhibit I**.

13. After receiving the May 3 letter, my colleague, R. Charles Henn Jr., conducted two telephonic meet-and-confers with counsel for Defendants. On May 12, 2016, Mr. Henn sent a letter to counsel for Defendants summarizing the meet-and-confers. A true and correct copy of this May 12 letter is attached as **Exhibit J**.

14. On May 23, 2016, counsel for Defendants sent a letter responding to Mr. Henn's May 12 letter. A true and correct copy of this May 23 letter is attached as **Exhibit K**.

15. On May 24, 2016, Mr. Henn sent a letter responding to the May 23 letter from Defendants' counsel. A true and correct copy of this May 24 letter is attached as **Exhibit L**.

16. On June 13, 2016, I sent counsel for Defendants a letter outlining the deficiencies in TRB's production, including documents that were not produced in color, inappropriate redactions, and the insufficient number emails produced. A true and correct copy of this June 13 letter is attached as **Exhibit M**.

17. On June 17, 2016, Mr. Henn sent counsel for Defendants a follow-up email regarding TRB's sparse production of emails, and requesting a date by which TRB would produce the rest of its emails. A true and correct copy of this June 17 email is attached as **Exhibit N**.

18. On June 28, 2016, I sent a letter to counsel for Defendants following up on my June 13 letter and Mr. Henn's June 17 email. In addition, I identified a number of Plaintiffs' document requests for which TRB had not produced responsive documents or had produced only a sparse number of documents. A true and correct copy of this June 28 letter is attached as **Exhibit O**.

19. On July 8, 2016, counsel for Defendants sent a letter responding to my June 28 letter. A true and correct copy of this July 8 letter is attached as **Exhibit P**.

20. On July 15, 2016, counsel for Defendants sent a letter request to this Court for a discovery conference, identifying alleged deficiencies in Plaintiffs' document production. In response, counsel for Plaintiffs sent a letter to the Court on July 18, 2016, responding to Defendants' July 15 letter and also raising TRB's paltry production of email and identifying the discovery requests for which TRB had produced none or very few responsive documents. A true and correct copy of this July 18 letter to the Court is attached as **Exhibit Q**.

21. On August 18, 2016, counsel for Plaintiffs sent an update to the Court regarding the status of the parties' discovery disputes, including TRB's continued refusal to produce email or responsive documents to sixty-six (66) of Plaintiffs' document requests.

22. On August 19, 2016, the Court held a telephonic hearing regarding the parties' discovery disputes. After counsel for Plaintiffs challenged Defendants' counsel's claim that Defendants "haven't failed to produce responsive e-mails" or other responsive documents, the Court authorized Plaintiffs to take a special 30(b)(6) deposition to test the veracity of those statements with respect to TRB's document collection and production. A true and correct copy of relevant portions of the August 19 hearing transcript is attached as **Exhibit R**.

23. Following the August 19 hearing, Plaintiffs repeatedly requested a date for the special 30(b)(6) deposition, but TRB would not make a witness available until September 29, 2016. Attached as **Exhibit S** is a true and correct copy of the First Amended Specially Set 30(b)(6) Notice served on TRB.

24. On September 19, 2016, counsel for Defendants requested a second discovery conference with the Court, raising alleged discovery deficiencies on the part of Plaintiffs.

25. On September 20, 2016, counsel for Plaintiffs sent an email to the Court responding to the alleged deficiencies identified by Defendants and again raising Defendants' failure to produce crucial documents in color, Defendants' improper redactions, and Defendants' refusal to produce sufficient documents responsive to Plaintiffs' discovery requests. A true and correct copy of this September 20 email to the Court is attached as **Exhibit T**.

26. On September 22, 2016, this Court held a hearing on the parties' discovery disputes. In response to Plaintiffs' concerns over Defendants' document-production deficiencies, the Court authorized Plaintiffs to file the present motion. A true and correct copy of relevant portions of the September 22 hearing transcript is attached as **Exhibit U**.

27. On September 29, 2016, Plaintiffs took the special 30(b)(6) deposition of TRB regarding its document collection and production. A true and correct copy of relevant portions of the September 29 deposition transcript is attached as **Exhibit V**.

28. Also on September 29, and shortly after the special 30(b)(6) deposition of TRB concluded, Defendants' counsel sent an email to counsel for Plaintiffs stating that Defendants would be making a supplemental document production on Thursday, October 6, 2016. A true and

correct copy of this September 29 email is attached as **Exhibit W**. Based on that representation, Plaintiffs withheld filing their motion to compel until Defendants made their supplemental production.

29. On October 6, 2016, Defendants produced less than 200 documents collectively. Many of the documents produced by TRB dated back to 2014 or 2015. TRB even produced one email from 2011 (TB014330) that had the subject line “Reebok”. Defendants’ modest supplemental production included: sporadic and incomplete financial reports, customer information, style numbers, pricing, and royalty information from the Licensee Defendants, and limited marketing expenditures and preliminary marketing and advertising plans from TRB. To date, no comprehensive sales reports from TRB have been produced, only a smattering of emails between TRB and the Licensee Defendants have been produced, and no correspondence regarding product approval, use of the marks at issue, advertising plans, or similar basic licensor-licensee communications have been produced.

30. Defendants’ most recent production suggests that it is not complete. For example, within the documents produced by TRB on October 6, was a June 3, 2014 email (TB014152) in which TRB’s CEO remarks to one of the Licensee Defendants that he was looking through hundreds of emails regarding consumer complaints regarding the quality of RBX-branded products. However, none of the additional consumer complaints have been produced. Similarly, no emails have been produced from September 2015 through the entirety of 2016.

31. Additional independent research also indicates that Defendants have failed to produce other responsive documents. For example, in an opposition proceeding in the Philippines, TRB claims to have hit \$90 million in wholesale revenue, but no documents regarding TRB’s wholesale revenue have been produced. Attached as **Exhibit X** is a true and correct copy of counsel for Defendants’ declaration identifying TRB’s wholesale revenue.

32. In addition, Licensee Defendant Cutie Pie Baby claims to have over 200 employees, yet Cutie Pie Baby has not produced any internal email. Attached as **Exhibit Y** is a

true and correct copy of an article from *Fashion Manuscript* from June 2015 identifying the number of employees from Cutie Pie Baby.

33. To date, Plaintiffs have produced 103,242 documents in response to Defendants' more than 300 document requests.

34. Prior to its October 6, 2016 production, TRB had produced 7,645 documents. With the October 6 production, Defendants have collectively produced a total of 9,500 documents, approximately 7,000 of which are pictures of RBX-branded products.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of October, 2016, at Atlanta, Georgia.



Nichole Davis Chollet